



4 March, 1985

Joseph Sullivan, Esq.
Jones & Jones Esq.
45 Essex Street
Hackensack, New Jersey 07601

Re: Duane Marine Salvage Corp. Superfund Site,
Respondent Hoke, Inc.

Dear Mr. Sullivan:

As I said I would when we spoke by telephone on March 1, I am sending you information that could be of use to your client, Hoke, Inc., in its preparation of a petition to EPA to dismiss Hoke from the order that we issued under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9606 ("CERCLA") for response actions at the Duane Marine hazardous waste disposal facility in Perth Amboy, New Jersey.

I enclose three samples of documentation that was found to be sufficient to allow EPA to withdraw its Order as to each of the petitioning parties. In these instances, the claims were based on the fact that the substances generated were not hazardous substances for CERCLA purposes. There will be material that is irrelevant to your client's fact situation, as you described it by telephone. Still, I believe that you can get a good idea of the evidentiary standard that is required to make a record with a sufficient factual basis for a decision by EPA to dismiss a petitioning party.

Please note that satisfactory documentation of a claim of this nature consists of (1) manifests with information that is consistent with such a claim (in particular, you should check the waste type and the hazard ID); (2) other records, such as work orders and invoices prepared at the time of the contract with the waste disposal facility; (3) descriptions of the waste generation process which yielded the waste in question; and (4) affidavits given by employees with sufficient knowledge of the processes and transactions at issue, or by an officer of the corporation, or both, where a sworn statement is needed to supplement documentary information with greater detail.

As you prepare your client's petition, you should bear in mind that in past cases the Region II office has made it a practice to construe the "generator liability" section of CERCLA, Section 107(a)(3), in a very strict fashion. Such a strict reading creates a weighty burden of proof for a respondent who seeks to show that he is not liable because his materials were at some time removed from a site where it can be shown that the materials were at some (other) time present.

EPA will give careful consideration to any petition you should submit. If I can be of further help to you, please do not hesitate to call me at (212) 264-8067.

Sincerely yours,

Margaret Thompson
Law Clerk
Waste and Toxic Substances Branch
Office of Regional Counsel

Enclosures

cc: Janet Feldstein, 2 ERRD-SIC

Janet

Clifford Slavin
Vice President
New Jersey American Warehouse
2500 Brunswick Avenue
Linden, New Jersey 07036

Re: Duane Marine Salvage Corporation Site
Administrative Order No. II-CERCLA-50107

Dear Mr. Slavin:

Enclosed you will find a photocopy of the New Jersey Special Waste Manifest upon which the United States Environmental Protection Agency (EPA) based its decision to name New Jersey American Warehouse as a respondent in the above-referenced matter.

The Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., authorizes EPA to impose liability for cleanup costs upon any person who generated hazardous wastes which were sent for disposal to a facility where EPA has determined that there has been a release or threatened release of hazardous substances into the environment.

According to records in EPA's possession at this time, namely, the waste manifest I mentioned to you when we spoke by telephone on March 28, your company sent 4,400 gallons of waste categorized as "plasticizer, resin, monomer, elastomer residues" to the Duane Marine facility on October 16, 1979. Your signature appears on the manifest.

If I can be of further help in this matter, please let me know. At this time I am assuming that it would be pointless to send you information concerning a petition for withdrawal of orders based on a claim that the substances sent to Duane Marine were not hazardous.

Sincerely yours,

Margaret Thompson
Law Clerk
Waste and Toxic Substances Branch

Enclosure

bcc: Janet Feldstein, 2ERRD-SICB

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